

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.151/ALD/2019

In the matter of

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

**M/S. PRUTHVI STEELS
THROUGH ITS PROPRIETOR MR. JAY DOSHI.**

Having its Registered Office at:
511, GOKUL, 80 A, BARODA STREET,
SANT TUKARAM ROAD, MASJID (EAST),
MUMBAI- 400009.

..... Applicant/Operational Creditor

Versus

KRP INFRASTRUCTURES & BUILDERS PVT. LTD

Having its Registered Office at:
MHD, 4/36, SECTOR H, JANKIPURAM,
LUCKNOW, UTTAR PRADESH- 226026.

.....Respondent/Corporate Debtor

Order pronounced on 22.08.2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Saurabh Basu, Adv. : For the Operational Creditor

Ex-parte v.o.d. 25.05.2022. : For the Corporate Debtor

ORDER

1. The instant application is filed on 10.05.2019 by M/s Pruthvi Steels (hereinafter referred as '**Applicant**'/'**Operational Creditor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "**I & B Code, 2016**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "**the Rules**"). The prayer made therein is to initiate Corporate Insolvency Resolution Process (hereinafter referred as '**CIRP**') in respect of M/S KRP Infrastructure and Builders Private Limited (hereinafter referred as '**Respondent**'/'**Corporate Debtor**') due to default in payment of total outstanding amount of Rs.10,06,521/- (Rupees Ten lakhs Six Thousand Five Hundred and Twenty One only) including interest at the rate 2.5% p.a. amounting to Rs. 15,420 (Rupees Fifteen Thousand five Hundred and Four Twenty) till 06.02.2019 and further interest at the rate of 2.5% till the date of payment.

2. Briefly stated facts of the present case as averred by the Applicant/Operational Creditor in its application filed in Form-5 containing part I, II, III, IV & V are that:-

i. The Applicant/Operational Creditor is involved in trading of Steel, Iron, and other related products. The Respondent/Corporate Debtor is likewise involved in trading Steel and Iron products. As part of this trade, the Corporate Debtor issued a purchase order with reference number PO/Cement/03/16-17 dated 17.01.2017, for procuring TMT Bar FE-500 with diverse specifications of total amount of Rs. 19,36,250/-. Copy of purchase order has been annexed as **Annexure A-1A** with the Application.

ii. The Operational Creditor accordingly raised two Tax Invoices bearing no 052/16-17 dated 20.01.2017 (Rs. 9,73,277/-) and 053/16-17 dated 22.01.2017 (Rs. 9,79,188/-) , totaling to an amount of Rs. 19,52,465 (Rupees Nineteen Lakhs Fifty Two Thousand Four Hundred and Sixty Five). As per the terms of payment mentioned in these invoices, payment to be made by the Corporate Debtor within the period of 20 days from the date of supply of goods via Post Date Cheques. Copies of these invoices have been annexed as **Annexure-2 & 3** with the Application. The details of both the tax invoices are mentioned in the table below:-

SELLER	BUYER	INVOICE NO.	DATE OF INVOICE	AMOUNT (INRS.)	MODE/TERMS OF PAYMENT
PRUTHVI STEELS 511, Gokul, 80-A, Baroda Road Street, SantTukaram Road, Masjid (East Mumbai)-400-009	KRP INFRASTRUCTURES & BUILDERS PRIVATE LTD, Gaurav Enclave, 15 No. Bus Last Stop, Mangal Nagar, near GCC Club Mira Road (E), Thane, 401107, PAN/IT No. AADCK7759A	052/16-17	20-Jan-2017	9,73,277.000	20 days
		053/16-17	22-Jan-2017	9,79,188.00	

iii. For this purpose, Corporate Debtor issued Axis Bank Cheque bearing no. 255109 dated 10.02.2017 of Rs. 19,36,250 (Rupees Nineteen Lakhs Thirty Six Thousand Two Hundred and Fifty only) for payment of the aforesaid invoice amounts issued by the Operational Creditor. However, the said cheque was dishonored upon presentation to the bank twice.

iv. It is stated that after repeated request by the Operation Creditor, Corporate Debtor credited a sum of Rs. 14,52,465 (Rupees Fourteen Lakhs Fifty Two Thousand and Four Hundred and Sixty Five only) in operational Creditor's bank account.

v. For the payment of remaining sum of Rs. 5,00,000 (Rupees Five lakhs), the Corporate Debtor issued another cheque bearing

no. 324897 dated 31 August 2018 of Rs. 5,00,000 and for the payment of interest amount Corporate Debtor issued another cheque bearing no 32488 dated 30.09.2018 of Rs. 4,00,123. Copies of Cheques dated 31.08.2018 and 30.09.2018 has been annexed as **Annexure-A-5 and A-6** respectively with the Application. Both the cheques were returned back upon being presented to the bank on 16.11.2018, giving the reason by the bank as the account of the Corporate Debtor was closed. Copies of return memo dated 16.11.2018, sent by the bank of the Operational Creditor, is annexed as **Annexure A-7** with the application. As stated by the Applicant/Operational Creditor in application, a return charge of Rs. 1,180/-was also levied on it by the bank.

vi. Due to non-payment of the outstanding amount of the aforesaid two bills, the Operational Creditor issued demand notice in Form 4 dated 27.11.2018 of Rs. 10,06,521/- (Rupees Ten lakhs Six Thousand Five Hundred and Twenty One only) including interest rate of 2.5% p.a. from 10.02.2017 till 31.10.2018 which is not yet replied by the Corporate Debtor. Copy of Demand Notice dated 27.11.2018 has been annexed as **Annexure A-4** with the application. Thereafter, Operational

Creditor issued Debit Note dated 06.02.2019 of Rs. 15,242 (Rupees Fifteen Thousand Two Hundred and Forty Two only).

Copy of debit note has been annexed as **Annexure A-8**.

3. This Tribunal vide earlier order dated 17.12.2019 dismissed this company petition as infructuous on the ground that in the matter of M/s Creative Enterprises vs M/s KRP Infrastructure & Builders Pvt. Ltd i.e. CP No. 172/ALD/2019 initiated CIRP against the Respondent/Corporate Debtor i.e. KRP Infrastructure & Builders Private Limited on 17.12.2019 and moratorium has been granted against the same Corporate Debtor, appointing Mr. Shravan Kumar Vishnoi as an Interim Resolution Professional (herein after referred as "**IRP**"). Thereafter, this Applicant/Operational Creditor has been asked to approach the said IRP for raising the grievance of non-payment of outstanding amounts of its bills. Later , the said Corporate Debtor settled with the Operational Creditor "M/s Creative Enterprises" and therefore, on filing of application by the IRP u/s 12A in Form FA for withdrawal of CIRP proceeding against the said Operational Creditor and therefore, the Tribunal passed an order dated 27.01.2020 allowing the withdrawal dismissing the petition CP No. 172/ALD/2019 against the Corporate Debtor "M/s Creative

Enterprises” for initiating the CIRP filed by another Operational Creditor “M/s KRP Infrastructure & Builders Pvt. Ltd”

4. Aggrieved by the above order of this Tribunal , the present Applicant/Operational Creditor filed an interlocutory application I.A No. 101 of 2021 on 19.11.2020 for recalling of order dated 17.12.2019 passed in respect of its petition CP(IB) No. 151/ALD/ALD/2019 by this Tribunal, taking a plea that the Applicant was however unaware of the order passed by this tribunal on 17.12.2019, since the previous advocate who was on record did not inform the same to the Applicant/Operational Creditor and also because there was no public announcement regarding the same by the IRP. Therefore, this Applicant/Operational Creditor could not approach the IRP immediately thereafter. It has annexed with the said IA, copy of the order dated 17.12.2019 passed in respect of this petition CP(IB) No. 151/ALD/ALD/2019 as **Exhibit “A”** dismissing as in fruituous on admission of CIRP proceeding against the same Corporate Debtor by another Operational Creditor as discussed in previous para . Copy of the order dated 17.12.2019 passed by this Tribunal in the matter of M/s Creative Enterprises vs M/s KRP Infrastructure & Builders Pvt. Ltd CP No. 172/ALD/2019

initiating CIRP proceeding against the said Corporate Debtor has been annexed as **Exhibit “B”** with the IA. Copy of the order dated 27.01.2020 allowing the withdrawal u/s 12A, dismissing the petition CP No. 172/ALD/2019 against the Corporate Debtor “M/s Creative Enterprises” for initiating the CIRP is enclosed as **“Exhibit “E”** with the IA.

5. In the IA No. 101/2021, following averments are made pleading for recalling the order dated 17.12.2019:-

“....

3.7 That it is pertinent to note that the said IRP did not make any public announcement as was directed by this Hon'ble Tribunal in its order dated 17.12. 2019. Also the IRP did not constitute COC and as the same is reflected in para 3 of the Order dated 27.01.2020. Thus the IRP could not have discharged himself under section 12A of the Insolvency and Bankruptcy Code, 2016 without 90% votes of the COC.

3.8 That the IRP discharged himself in the matter between Ms. Creative Enterprises Vs M/s KRP Infrastructures & Builders Pvt. Ltd., as the same got settled. However the IRP did not take into consideration the matters that were filed by others including this Applicant against the Corporate Debtor i.e. KRP Infrastructures& Builders Pvt. Ltd. Also there are no reasons recorded in the Order dated 27.01.2020 as to the formation of COC and whether the COC voted for discharging the IRP from his duties under section 12A of the Insolvency and Bankruptcy Code, 2016.

3.9 That the aforesaid matter merely got dismissed as infructuous on appointment of IRP in CP (IB) No. 172/ALD/2019. However the IRP neither made any

public announcement nor constituted the COC. Hence, the Applicant could not place its claim. This has caused grave injustice and grievance to the Applicant/operational Creditor.

4.1.1 It is submitted that the IRP who was appointed by the Hon'ble Tribunal vide order dated 17.12.2019 in the matter between Ms. Creative Enterprises Vs M/s KRP Infrastructures & Builders Pvt. Ltd. i.e. CP (IB) No. 172/ALD/ 2019, was directed to make public announcement about his appointment as an IRP and constitute the COC accordingly.

4.1.2 Also on the said date i.e. 17.12.2019, the aforesaid matter was also placed before the Hon'ble Tribunal and the same was dismissed as infructuous on appointment of the said IRP.

4.1.3 However, the said IRP neither made any public announcement nor constituted the COC and thereafter discharged himself by filing a withdrawal application before the Hon'ble Tribunal, under section 12A of the Insolvency and Bankruptcy Code, 2016. The IRP simply recused or discharged himself from acting as an IRP in the matter against the Corporate Debtor i.e. KRP Infrastructures & Builders Pvt. Ltd., as the matter between Ms. Creative Enterprises Vs M/s KRP Infrastructures & Builders Pvt. Ltd got settled.

4.1.4 Due to the aforesaid reason, the Applicant/Operational Creditor could not file the proof of claim before the IRP and get the outstanding money back from the Corporate Debtor till date.

4.1.5 In addition to the above, the Applicant suffered grave loss and inconvenience as the aforesaid matter is now dismissed. Also the Applicant had to incur huge legal expenses for taking appropriate actions against the Corporate Debtor and for filing the aforesaid Application before this Hon'ble Tribunal.

4.1.6 In view of the above, the Applicant has filed the present Application for getting the aforesaid Company Petition restored and for getting the order dated 17 December 2019, recalled.

Prayers

(a) *The Miscellaneous Application for restoring the aforesaid Company Petition and recalling the Order dated 17.12.2018, may be allowed;*

(b) *The Hon'ble Tribunal be pleased to condone delay of months and 18 days in filing the present Application as the same could not be filed by this Applicant immediately after the Order dated 27.01.2020 because it was difficult to find and appoint another advocate immediately for filing this present Application and also because there was an initial lockdown and outbreak of Corona Virus;*

(c) *The Hon'ble Tribunal be please to admit the aforesaid Company Petition and appoint the IRP to accept the Claim that the Applicant proposes to put before him;*

(d) *Pending the hearing and final disposal of this application direct that no Resolution Plan may be proceeded to be considered and/or approved by the Committee of Creditors.*

6. After considering the pleadings of the Applicant as made in its IA 101/2021 , discussed above , this Tribunal vide order dated 26.10.2021 allowed the aforesaid application and held as under:-

“IA No.101/2021 has been filed for recalling of our order dated 17.12.2019, whereby this Adjudicating Authority had disposed of 'CP No.(IB)151/ALD/2019' filed U/s 9 of IBC by the applicant herein on the ground that the corporate debtor had already been admitted due to CIRP. However, subsequently on account of settlement between the parties in that matter, an application U/s 12A of IBC, 2016 had been filed, which was allowed by the order of this Adjudicating Authority dated 27.01.2020.

In view of these undisputed facts, we allow this application and restore the application CP No. (IB)

151/ALD/2019 at its original stage. The same may be listed for further consideration on 7th December, 2021.

The present IA No.101/2021 stands allowed and disposed of in terms indicated above.”

7. On restore the application CP (IB) No. 151/ALD/2019 at its original stage, the Respondent/Corporate Debtor has been given further opportunity to file reply in respect of this petition by issuing notice vide order dated 09.03.2022 of this tribunal but neither any reply has been filed nor anybody or any Counsel appeared to present case on behalf of the Corporate Debtor. Therefore, this Tribunal passed an order dated 19.08.2019 granting liberty to the Applicant/Operational Creditor to issue notice in the newspaper where the registered office of the Corporate Debtor is located. Applicant vide diary no. 2232 dated 20.11.2019 filed Supplementary Affidavit informing that it published a notice in the Indian Express Newspaper on 17.01.2019 regarding initiation of CIRP against the Corporate Debtor. Copy of notice published in the newspaper has been annexed as **Annexure SA-1**. However, no response has been received from the Corporate Debtor and therefore, it has been pleaded by the Applicant that the Petition may be heard ex-parte against the Corporate Debtor on merits.

8. This Tribunal vide order dated 25.05.2022 set the Respondent as Ex-parte. The Applicant has also filed written submission vide Dairy No. 135 dated 10.11.2022 which has been considered and taken on record.

9. We have considered the submissions made by the Ld. Counsel for the Applicant and perused the records.

10. On perusal of the record it has been noted that at the time when the instant Petition was filed by the Operational Creditor on 10.05.2019 as per Section 4 of the I & B, Code 2016 the threshold limit was Rs. 1 lakh prior to the amendment vide Notification No. S.O. 1205 (E) dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India (the said notification is only 'Prospective in nature' and not a 'retrospective' one). The minimum amount of default was raised from one lakh rupees to one crore rupees through this amendment. The applicability of the threshold limit of Rs. 1 crore shall only apply in cases filed on or after 24.03.2020. As the instant application was on 10.05.2019 and notices were issued by this Hon'ble Tribunal prior to 24.03.2020, the said notification is not applicable to the instant proceedings and the Application under Section 9 filed by

the Operational Creditor is maintainable under Section 4 of the Code.

11. It is to be noted that the total outstanding amount of Rs. 10,06,521 (Rupees Ten Lakhs Six Thousand Five Hundred and Twenty One Only) constitute operational debt in terms of Section 5(21) in respect of supply of TMT-Bar FE 500 by the operational creditor. The date of default as per details mentioned in Part-IV of the Application falls to be 20 days from the date of supply of goods which is evident by the Purchase order and two Tax invoices annexed with the Application as **Annexure A-1A and A-3** respectively.

12. It is observed that the Operational Creditor has sent a demand notice dated 27.11.2017 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of outstanding dues worth Rs. 10,06,521/- . It is stated by the Applicant in part-IV of the Application that Corporate debtor credited the part of the amount due of Rs. 14,52,465/-. For the remaining amount Corporate Debtor issued Cheque on 31.08.2018 and 30.09.2018 (annexed as **Annexure A-5 and A-6** with the Application) which was returned vide return memo dated 16.11.2018 by the Bank of India. Copy of Return

Memo is annexed as **Annexure A-7**. In view of the above default by the Corporate Debtor evidenced from the record, it is clear that the date of default is 16.11.2018 and the date of filing of the application is 10.05.2019 and hence, the instant application has been found as filed with the limitation period of three years. The date of default as per demand notice has been found to be 08.02.2017 and petition u/s 9 is filed on 10.05.2019 and hence, petition is found to be filed well within the limitation period.

13. In terms of section 9(3) of I & B Code 2016, the operational creditor has provided a copy of invoice demanding payment and demand notice given to the corporate debtor for payment of goods supplied. However, the mandatory affidavit under section 9(3) (b) to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt is filed at Pg 22 of the application. There is nothing on record to evidence that there is a dispute, pre-existing before the service of the Demand Notice upon the Respondent. It is stated that there is no documentary evidence to show that there was any dispute between the parties which is one of the important condition for the admission of the Section 9 Application under the I & B Code, 2016.

14. It has been noted by this Tribunal that no reply has been filed by the Corporate Debtor in this case, despite valid notice has been duly served upon it on 09.03.2022 and publication of circular in the newspaper. Therefore, without any plea raised on behalf of the Corporate Debtor, question of a pre-existing dispute between the parties also does not arise.

15. Taking into account provisions of Section 9 of the I & B Code, 2016, we find that the application made under sub-section (1) of Section 9 along with documents and fees paid as mentioned in its sub-section (2), is complete as no payment of the unpaid operational debt of Rs.10,06,521/- has been made which is well above the threshold limit of Rs. 1 lakh . Further, no notice of dispute has been given by the Corporate Debtor to the Operational Creditor and application is also found filed within limitation period and thus, fulfilling all conditions as provided under clause (i) of sub-section (5) of Section 9. Therefore, after finding that all the conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor. We are of the considered opinion that this application is fit for admitting under Section 9(5) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor.

16. The Operational Creditor has not proposed the name of the IRP in the present application. Hence, this adjudicated Authority appoints Ms. Babita Jain as the IRP in the present case, having Registration No. IBBI/IPA-002/IP-N00321/2017-2018/10926, R/o of 35B/6 Ram Mohan Plaza, Madho Kunj Master Zahurul Hasan Road, Allahabad, Uttar Pradesh-211002. [Email: jainbabita06@gmail.com](mailto:jainbabita06@gmail.com). The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Ankita Sharma, and it is found that there is no proceeding pending against the proposed IRP. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 22 November 2023.

17. Accordingly, this application is admitted u/s 9(5) of I & B Code, 2016 under the following terms and conditions.

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. KRP Infrastructure & Builders Private Limited is hereby admitted.

ii) We hereby declare a moratorium u/s 14 and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) This Adjudicating Authority hereby appoints Ms. Babita Jain as the IRP in the present case, having Registration No. IBBI/IPA-002/IP-N00321/2017-2018/10926, R/o of 35B/6 Ram Mohan Plaza, Madho Kunj Master Zahurul Hasan Road, Allahabad, Uttar Pradesh-211002. [Email: jainbabita06@gmail.com](mailto:jainbabita06@gmail.com). The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Ankita Sharma, and it is found that there is no proceeding pending against the proposed IRP. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 22 November 2023.

iv) The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

v) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -

- a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- b) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- c) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- vi) The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vii) The provisions of sub-section (1) of Section 14 of I & B Code, 2016 shall not apply to such transactions as may be notified by

the Central Government in consultation with any financial sector regulator.

viii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.

ix) Provided that where at any time during the Corporate Insolvency Resolution Process period if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant in accordance with I & B Code, 2016 read with the relevant rules & regulation framed thereunder.

x) The Operational Creditor/Applicant is directed to deposit Rs. 1,00,000 (Rupees one Lakh only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the

preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.

xi) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.

xii) List the matter on 03.10.2023 for filing of the first progress report.

xiii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

-Sd-

(Ashish Verma)
Member (Technical)

-Sd-

(Praveen Gupta)
Member (Judicial)